



**Tundo v Director of Public Prosecution (Criminal Petition
E022 of 2021) [2023] KEHC 21008 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21008 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL PETITION E022 OF 2021
SC CHIRCHIR, J
JULY 28, 2023**

BETWEEN

PAUL LUTINGA TUNDO APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTION RESPONDENT

(Arising from Mumias Chief Magistrate's Criminal Case No 393 of 2006.)

RULING

1. The Applicant's undated petition seeks for a declaration that his rights under Article 50(2)(p), 26(1), 27(1),(2) 28, 29(d)f, 2(1)(3)(4) and (5) of the Constitution have been violated.
2. He further asks the court to consider his mitigation and come up with an appropriate sentence.
3. From the records available, the petitioner was charged with the offence of robbery with violence contrary to section 295 as read with section 296(2) of the Penal Code, in Mumias Chief Magistrate's Criminal Case No 393 of 2006.
4. He was convicted and sentenced to death. The conviction and sentence was upheld by the High Court in Kakamega Criminal Appeal No 82 of 2007. The petitioner further states that he then moved to the court of Appeal in Kisumu, where his Appeal was again, dismissed
5. However, there are no records in respect to the Court of Appeal proceedings. Consequently, I am unable to make a decision on the petition in the absence of the records of the court of Appeal.
6. I also take note of the fact that the petitioner has the benefit of legal representation. I therefore direct that the petitioner file the record of proceedings and Judgement of the Court of Appeal. I will give further directions on the substance of the petition once the record of proceedings and Judgment of the court of Appeal is filed.



DATED , SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 28TH DAY OF JULY, 2023.

S. CHIRCHIR

JUDGE

In the presence of:-

